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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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Washington, DC 20529 - 2090

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U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES Date: **FEB 04 2010**
MSC-05-178-10037

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Los Angeles office terminated the temporary resident status of the applicant, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible for temporary resident status based on both a lack of documentation and inconsistent documentation in the record of proceedings.

On appeal, the applicant asserts that the director's decision is erroneous because the evidence which she previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has not submitted any additional evidence on appeal. The entire record was reviewed and considered in rendering this decision.¹

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to

¹ The record reveals that the Form I-694, notice of appeal, contains the name of [REDACTED]. However, since the attorney has not filed a Form G-28, notice of entry of appearance, he has not been provided a copy of this decision.

the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has overcome the inconsistencies in the record and established her eligibility for temporary resident status. As stated, the applicant must establish that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed the witness statements in their entirety to determine the applicant's eligibility; however, the AAO will not quote each statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from [REDACTED] and [REDACTED]. The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for the duration of requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a

² The affidavits of [REDACTED] and [REDACTED] are almost identical.

witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, [REDACTED] and [REDACTED] state that they met the applicant in the United States in May 1981. [REDACTED] states that she met the applicant in the United States in March 1981. [REDACTED] states that he met the applicant in the United States in April 1980. However, the testimony of the witnesses is inconsistent with the testimony of the applicant at the time of her interview on the I-687 application, at which time the applicant states that she first entered the United States in November 1981. Due to these inconsistencies, the testimony of the witnesses has minimal probative value.

The applicant has submitted an employment verification letter from [REDACTED] who states that the applicant worked for him as a babysitter from November 1981 until August 1987.

The employment verification letter from [REDACTED] does not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letter fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily duties as a babysitter, the number of hours or days she was employed, or the location at which she was employed. Furthermore, the witness does not state how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. For these reasons, the employment verification letter is of little probative value.

The applicant has submitted a copy of the 1982 federal and state income tax returns of her mother. The federal and state tax returns list the applicant as a dependent residing in the household of her mother at [REDACTED] in Santa Ana. These documents are inconsistent with the testimony of the applicant in the I-687 application, in which the applicant does not list this address as her residence at any during the requisite statutory period. Although these documents would be some evidence in support of the applicant's presence in the United States in 1982, due to these inconsistencies the documents have minimal probative value.

The record contains a copy of the 1984 federal income tax return of the applicant's mother. The federal tax returns list the applicant as a dependent residing in the household of her mother at [REDACTED] in Santa Ana. This document is inconsistent with the testimony of the applicant in the I-687 application, in which the applicant lists this address as her residence from March 1985 for the duration of the requisite period. Although this document would be some evidence in support of the applicant's presence in the United States in 1984, due to this inconsistency the document has minimal probative value.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-687 application, a Form I-130, petition for alien relative, filed on behalf of the applicant by her mother, and a Form I-698, application to adjust status from temporary to permanent resident.³

The director of the Los Angeles Office cited some of the aforementioned inconsistencies in a notice of intent to terminate (NOIT) the applicant's temporary residence. In rebuttal to the NOIT, the applicant asserted that the evidence which she previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant did not submit any additional evidence in response to the NOIT.

The AAO finds that the applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the applicant's entry into and residences in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Based on the foregoing, the AAO finds that the applicant has failed to resolve the inconsistencies in the record with independent objective evidence. Furthermore, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under

³ The applicant's I-698 application has been rejected and administratively closed, based upon the termination of the applicant's temporary resident status.

both 8 C.F.R § 245a.2(d)(5) and *Matter of E- M-, supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.